

# House Bill 3294

Sponsored by Representative BARKER (at the request of Department of Justice)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires certain governing bodies of public bodies to make audio, audio-video or digital recording of public meetings. Requires written record of meetings and specifies content of written record. Requires recordings and related written records to be available within seven working days of meeting or within one working day of request to review or inspect, whichever is later.

Requires Attorney General to develop training materials to educate public employees on public meetings law requirements.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public meetings; creating new provisions; amending ORS 192.640, 192.650, 192.660,  
3 293.714, 342.176 and 414.395; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.650 is amended to read:

6 192.650. (1) **Except as provided in sections 3 and 4 of this 2011 Act**, the governing body of  
7 a public body shall provide for the *[sound, video]* **audio, audio-video** or digital recording or the  
8 taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the  
9 meeting is required, except as otherwise provided by law, but the written minutes or recording must  
10 give a true reflection of the matters discussed at the meeting and the views of the participants. All  
11 minutes or recordings shall be available to the public within a reasonable time after the meeting,  
12 *and shall include at least the following information:*. **Any written minutes shall meet the re-**  
13 **quirements of section 5 of this 2011 Act. In the absence of written minutes, a recording must**  
14 **include:**

15 (a) **The identity of the public body;**

16 (b) **The date, time and location of the meeting; and**

17 *[(a)]* (c) *[All]* **The names of the members of the governing body present;**].

18 (2) **If recordings are made to meet the requirements of this section, written records de-**  
19 **scribed in section 5 (2)(b) of this 2011 Act must also be maintained.**

20 *[(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their dis-*  
21 *position;]*

22 *[(c) The results of all votes and, except for public bodies consisting of more than 25 members unless*  
23 *requested by a member of that body, the vote of each member by name;]*

24 *[(d) The substance of any discussion on any matter; and]*

25 *[(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document dis-*  
26 *cussed at the meeting.]*

27 *[(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section.*

28 *However, the minutes of a hearing held under ORS 332.061 shall contain only the material not ex-*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 *cluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be*  
 2 *kept in the form of a sound or video tape or digital recording, which need not be transcribed unless*  
 3 *otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for*  
 4 *which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from*  
 5 *disclosure. However, excluded materials are authorized to be examined privately by a court in any legal*  
 6 *action and the court shall determine their admissibility.]*

7 *[(3) A reference in minutes or a recording to a document discussed at a meeting of a governing*  
 8 *body of a public body does not affect the status of the document under ORS 192.410 to 192.505.]*

9 *[(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript*  
 10 *from a recording.]*

11 **SECTION 2. Sections 3 to 5 of this 2011 Act are added to and made a part of ORS 192.610**  
 12 **to 192.690.**

13 **SECTION 3. (1) Notwithstanding ORS 192.650, a governing body of any of the following**  
 14 **public bodies shall provide for the audio, audio-video or digital recording of meetings of the**  
 15 **governing body:**

16 (a) A city, county, school district, education service district, community college district  
 17 or community college service district; or

18 (b) A board or commission of state government, as defined in ORS 174.111, that is ex-  
 19 pressly created by statute or by the Oregon Constitution.

20 (2) A governing body that is subject to the requirements of this section shall also prepare  
 21 a written record of the meeting that meets the requirements of section 5 of this 2011 Act.

22 (3) The recording described in subsection (1) of this section and the written record de-  
 23 scribed in subsection (2) of this section shall be available for review and inspection within  
 24 seven working days of the date of the meeting or within one working day following a request  
 25 to review and inspect the recording or written record by a member of the public, whichever  
 26 date is later.

27 (4) A public body may charge a person a fee for the preparation of a transcript from a  
 28 recording. This subsection does not require a public body to prepare a transcript.

29 (5) Subsection (1) of this section does not apply to a meeting or part of a meeting that  
 30 is a hearing held under ORS 332.061, unless a public hearing has been requested under ORS  
 31 332.061 (1). A nonpublic hearing under ORS 332.061 is subject to the requirements of ORS  
 32 192.650. If a recording is made of a nonpublic hearing under ORS 332.061, the recording is  
 33 exempt from disclosure under ORS 192.410 to 192.505.

34 (6) If a provision of law requires a governing body described in subsection (1) of this  
 35 section to take or maintain written minutes of meetings of the governing body, that re-  
 36 quirement is satisfied by taking and maintaining the recordings and written records de-  
 37 scribed in subsections (1) and (2) of this section.

38 **SECTION 4. (1) Notwithstanding ORS 192.650, a governing body of a public body shall**  
 39 **provide for the audio, audio-video or digital recording of executive sessions held by the gov-**  
 40 **erning body. To the extent practicable, an executive session shall be recorded separately**  
 41 **from any part of a meeting that is open to the public.**

42 (2) A recording of an executive session is confidential and exempt from disclosure under  
 43 ORS 192.410 to 192.505 unless a final and unappealed determination that the recording shows  
 44 a violation of ORS 192.610 to 192.690 has been made by one of the following:

45 (a) A court of competent jurisdiction;

- 1       **(b) The Oregon Government Ethics Commission;**
- 2       **(c) The Attorney General in response to a petition under ORS 192.450; or**
- 3       **(d) A district attorney in response to a petition under ORS 192.460.**

4       **(3) If a public meeting is held entirely in executive session, then the governing body of**  
 5 **a public body shall also prepare a written record of the meeting that meets the requirements**  
 6 **of section 5 of this 2011 Act.**

7       **(4) A hearing held under ORS 332.061 is not subject to the requirements of this section,**  
 8 **but is subject to ORS 192.650. If a recording is made of a nonpublic hearing under ORS**  
 9 **332.061, the recording is exempt from disclosure under ORS 192.410 to 192.505.**

10       **SECTION 5.** **(1) A written record prepared under ORS 192.650 or section 3 or 4 of this 2011**  
 11 **Act shall include at least the following information:**

- 12       **(a) The date, time and location of the meeting and the identity of the governing body;**
- 13       **(b) A list of the members of the governing body that were present during the meeting;**
- 14       **(c) A general description of the matters discussed at the meeting, including the basis for**  
 15 **any executive session, if appropriate; and**
- 16       **(d) Subject to ORS 192.410 to 192.505, a reference to any document discussed at the**  
 17 **meeting.**

18       **(2) Written records prepared under ORS 192.650 or section 3 of this 2011 Act shall also**  
 19 **include the following information:**

- 20       **(a) All motions, proposals, resolutions, orders, ordinances and measures proposed and**  
 21 **their disposition, appearing in the order they were voted on by the governing body; and**
- 22       **(b) The results of all votes and, except for governing bodies consisting of more than 25**  
 23 **members unless requested by a member of the governing body, the vote of each member by**  
 24 **name.**

25       **(3) Written minutes prepared under ORS 192.650 shall also include the substance of any**  
 26 **discussion on any matter.**

27       **(4) To the extent that a written record reflects matters discussed in executive session,**  
 28 **that material is exempt from disclosure under ORS 192.410 to 192.505 if disclosure would be**  
 29 **inconsistent with the purpose authorizing the executive session.**

30       **(5) Notwithstanding subsections (1) to (3) of this section, the written record of a non-**  
 31 **public hearing under ORS 332.061 shall contain only the material not excluded under ORS**  
 32 **332.061 (2).**

33       **SECTION 6.** **ORS 192.640 is amended to read:**

34       192.640. **(1) The governing body of a public body shall provide for and give public notice, rea-**  
 35 **sonably calculated to give actual notice to interested persons including news media [which] that**  
 36 **have requested notice, of the time and place for holding regular meetings. The notice shall also in-**  
 37 **clude a list of the principal subjects anticipated to be considered at the meeting, but this require-**  
 38 **ment shall not limit the ability of a governing body to consider additional subjects.**

39       **(2) If an executive session only will be held, the notice shall be given to the members of the**  
 40 **governing body, to the general public and to news media [which] that have requested notice, stating**  
 41 **the specific provision of law authorizing the executive session.**

42       **(3) No special meeting shall be held without at least 24 hours' notice to the members of the**  
 43 **governing body, the news media [which] that have requested notice and the general public. In case**  
 44 **of an actual emergency, a meeting may be held upon such notice as is appropriate to the circum-**  
 45 **stances, but the recording or written record of [minutes for] such a meeting shall describe the**

1 emergency justifying less than 24 hours' notice.

2 **SECTION 7.** ORS 192.660 is amended to read:

3 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from  
4 holding executive session during a regular, special or emergency meeting, after the presiding officer  
5 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

6 (2) The governing body of a public body may hold an executive session:

7 (a) To consider the employment of a public officer, employee, staff member or individual agent.

8 (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought  
9 against, a public officer, employee, staff member or individual agent who does not request an open  
10 hearing.

11 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-  
12 censed pursuant to ORS 441.015 to 441.063 including, but not limited to, all clinical committees,  
13 executive, credentials, utilization review, peer review committees and all other matters relating to  
14 medical competency in the hospital.

15 (d) To conduct deliberations with persons designated by the governing body to carry on labor  
16 negotiations.

17 (e) To conduct deliberations with persons designated by the governing body to negotiate real  
18 property transactions.

19 (f) To consider information or records that are exempt by law from public inspection.

20 (g) To consider preliminary negotiations involving matters of trade or commerce in which the  
21 governing body is in competition with governing bodies in other states or nations.

22 (h) To consult with counsel concerning the legal rights and duties of a public body with regard  
23 to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief executive officer of  
25 any public body, a public officer, employee or staff member who does not request an open hearing.

26 (j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding  
27 proposed acquisition, exchange or liquidation of public investments.

28 (k) If the governing body is a health professional regulatory board, to consider information ob-  
29 tained as part of an investigation of licensee or applicant conduct.

30 (L) If the governing body is the State Landscape Architect Board, or an advisory committee to  
31 the board, to consider information obtained as part of an investigation of registrant or applicant  
32 conduct.

33 (m) To discuss information about review or approval of programs relating to the security of any  
34 of the following:

35 (A) A nuclear-powered thermal power plant or nuclear installation.

36 (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal  
37 power plant or nuclear installation.

38 (C) Generation, storage or conveyance of:

39 (i) Electricity;

40 (ii) Gas in liquefied or gaseous form;

41 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

42 (iv) Petroleum products;

43 (v) Sewage; or

44 (vi) Water.

45 (D) Telecommunication systems, including cellular, wireless or radio systems.

1 (E) Data transmissions by whatever means provided.

2 (3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides  
 3 request that negotiations be conducted in executive session. Labor negotiations conducted in execu-  
 4 tive session are not subject to the notification requirements of ORS 192.640.

5 (4) Representatives of the news media, **including electronic news media**, shall be allowed to  
 6 attend executive sessions, **but the governing body may require that specified information be**  
 7 **undisclosed. Representatives of the news media may not attend executive sessions:**

8 (a) *[other than those]* Held under subsection (2)(d) of this section relating to labor negotiations;

9 (b) **Held under subsection (2)(h) of this section relating to advice from counsel with re-**  
 10 **gard to current or likely litigation; or**

11 (c) *[executive session]* Held pursuant to ORS 332.061 (2) *[but the governing body may require that*  
 12 *specified information be undisclosed].*

13 *[(5) When a governing body convenes an executive session under subsection (2)(h) of this section*  
 14 *relating to conferring with counsel on current litigation or litigation likely to be filed, the governing*  
 15 *body shall bar any member of the news media from attending the executive session if the member of*  
 16 *the news media is a party to the litigation or is an employee, agent or contractor of a news media or-*  
 17 *ganization that is a party to the litigation.]*

18 [(6)] (5) No executive session may be held for the purpose of taking any final action or making  
 19 any final decision.

20 [(7)] (6) The exception granted by subsection (2)(a) of this section does not apply to:

21 (a) The filling of a vacancy in an elective office.

22 (b) The filling of a vacancy on any public committee, commission or other advisory group.

23 (c) The consideration of general employment policies.

24 (d) The employment of the chief executive officer, other public officers, employees and staff  
 25 members of a public body unless:

26 (A) The public body has advertised the vacancy;

27 (B) The public body has adopted regular hiring procedures;

28 (C) In the case of an officer, the public has had the opportunity to comment on the employment  
 29 of the officer; and

30 (D) In the case of a chief executive officer, the governing body has adopted hiring standards,  
 31 criteria and policy directives in meetings open to the public in which the public has had the op-  
 32 portunity to comment on the standards, criteria and policy directives.

33 [(8)] (7) A governing body may not use an executive session for purposes of evaluating a chief  
 34 executive officer or other officer, employee or staff member to conduct a general evaluation of an  
 35 agency goal, objective or operation or any directive to personnel concerning agency goals, objec-  
 36 tives, operations or programs.

37 [(9)] (8) Notwithstanding subsections (2) and [(6)] (5) of this section and *[ORS 192.650]* **section**  
 38 **4 of this 2011 Act:**

39 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to  
 40 the substance and disposition of licensee or applicant conduct investigated by a health professional  
 41 regulatory board.

42 (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to  
 43 the substance and disposition of registrant or applicant conduct investigated by the State Landscape  
 44 Architect Board or an advisory committee to the board.

45 **SECTION 8.** ORS 293.714 is amended to read:

1 293.714. [(1) Notwithstanding ORS 192.650 (1) and (2), full sound recordings shall be made of every  
 2 meeting of the Oregon Investment Council. The full sound recordings shall be produced on equipment  
 3 selected by the Oregon Investment Council for compatibility with equipment for reproduction by the  
 4 State Archives.]

5 [(2)] **In addition to the requirements of section 3 of this 2011 Act, the Oregon Investment**  
 6 Council shall maintain a written log of each sound recording that gives a true reflection of the  
 7 matters discussed at the meeting and where those matters are found on the sound recording.

8 [(3) Notwithstanding ORS 192.650 (1)] **Notwithstanding section 3 of this 2011 Act,** the council  
 9 shall make the full sound recording and written log of each sound recording of each meeting avail-  
 10 able to the public prior to the next regularly scheduled meeting of the council.

11 **SECTION 9.** ORS 342.176 is amended to read:

12 342.176. (1) The Teacher Standards and Practices Commission shall promptly undertake an in-  
 13 vestigation upon receipt of a complaint or information that may constitute grounds for:

14 (a) Refusal to issue a license or registration, as provided under ORS 342.143;

15 (b) Suspension or revocation of a license or registration, discipline of a person holding a license  
 16 or registration, or suspension or revocation of the right to apply for a license or registration, as  
 17 provided under ORS 342.175; or

18 (c) Discipline for failure to provide appropriate notice prior to resignation, as provided under  
 19 ORS 342.553.

20 (2) The commission may appoint an investigator and shall furnish the investigator with appro-  
 21 priate professional and other special assistance reasonably required to conduct the investigation,  
 22 and the investigator is empowered to subpoena witnesses over the signature of the executive direc-  
 23 tor, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

24 (3) Following completion of the investigation, the executive director shall report in writing any  
 25 findings and recommendations to:

26 (a) The commission, meeting in executive session, at its next regular meeting following com-  
 27 pletion of the investigation; and

28 (b) The person against whom the charge is made.

29 (4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used  
 30 in the investigation and the report of the executive director are confidential and not subject to  
 31 public inspection unless the commission makes a final determination to:

32 (A) Refuse to issue a license or registration, as provided under ORS 342.143;

33 (B) Suspend or revoke a license or registration, discipline a person holding a license or regis-  
 34 tration, or suspend or revoke the right to apply for a license or registration, as provided under ORS  
 35 342.175; or

36 (C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided  
 37 under ORS 342.553.

38 (b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confi-  
 39 dential.

40 (5) If the commission finds from the report that there is sufficient cause to justify holding a  
 41 hearing under ORS 342.177, it shall notify in writing:

42 (a) The person charged, enclosing a statement of the charges and a notice of opportunity for  
 43 hearing;

44 (b) The complainant; and

45 (c) The employing district or public charter school, if any.

1 (6) If the commission finds from the report that there is not sufficient cause to justify holding  
2 a hearing under ORS 342.177, it shall notify in writing:

3 (a) The person charged;

4 (b) The complainant; and

5 (c) The employing district or public charter school, if any.

6 (7) Notwithstanding ORS 192.660 [(6)] (5), the commission may make its findings under this sec-  
7 tion in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

8 **SECTION 10.** ORS 414.395 is amended to read:

9 414.395. (1) Notwithstanding ORS 192.660, the Drug Use Review Board may meet in an executive  
10 session for purposes of reviewing the prescribing or dispensing practices of individual physicians or  
11 pharmacists or to discuss drug use review data pertaining to individual physicians or pharmacists  
12 or to review profiles of individual clients. The [meeting] **executive session** is subject to the re-  
13 quirements of [ORS 192.650 (2)] **section 4 of this 2011 Act.**

14 (2) The board shall provide appropriate opportunity for public testimony at the regularly  
15 scheduled board meetings.

16 **SECTION 11.** **The Attorney General shall develop training materials designed to generally**  
17 **educate public employees on the requirements of ORS 192.610 to 192.690 and make those**  
18 **materials freely available on the Attorney General's website.**

19 **SECTION 12.** **This 2011 Act being necessary for the immediate preservation of the public**  
20 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
21 **on its passage.**

22